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No. 1093 86

In the Supreme Court of the United States

OCTOBER TERM, 1944

REGAL KNITWEAR COMPANY, INCORPORATED,
PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statute involved	3
Statement	3
Argument	8
Conclusion	25
Appendix	26

CITATIONS

Cases:

American Cyanamid Co., Matter of, 37 N. L. R. B. 578	11
American Laundry Machinery Co., Matter of, 45 N. L. R. B. 355, enforced 138 F. (2d) 889	12
Bethlehem Shipbuilding Corp. v. National Labor Relations Board, 114 F. (2d) 930	22
Bethlehem Steel Co. v. *National Labor Relations Board*, 120 F. (2d) 641	23
Boswell Co., J. G., Matter of, 35 N. L. R. B. 968, enforced 136 F. (2d) 585	11
Butler Bros. v. *National Labor Relations Board*, 134 F. (2d) 981, certiorari denied, Nos. 274, 380, this Term	19, 22
Cape County Milling Co., Matter of, 49 N. L. R. B. 226, enforced 140 F. (2d) 543	12
Continental Oil Co., Matter of, 35 N. L. R. B. 331	11
Elastic Stop Nut Corp. v. *National Labor Relations Board*, decided May 1, 1944, enforcing 51 N. L. R. B. 694	23
Ford Motor Co., Matter of, 31 N. L. R. B. 994	9
Helvering v. *Gowran*, 302 U. S. 238	13
Humble Oil & Refining Co. v. National Labor Relations Board, 140 F. (2d) 777, enforcing 48 N. L. R. B. 1118	23
Idaho Refining Co., Matter of, 47 N. L. R. B. 1127	12
International Ass'n of Machinists v. *National Labor Relations Board*, 311 U. S. 72	13
National Labor Relations Board v. *Aintree Corp.*, 132 F. (2d) 469, certiorari denied, 318 U. S. 774	14
National Labor Relations Board v. *Air Associates*, 121 F. (2d) 586	20, 21
National Labor Relations Board v. *Automotive Maintenance Machinery Co.*, 315 U. S. 282	19

592040—44—1

Cases—Continued. Page

National Labor Relations Board v. *Bachelder*, 125 F. (2d) 387 22
National Labor Relations Board v. *Baltimore Transit Co.*, 140 F. (2d) 51, certiorari denied, No. 735, this Term 14
National Labor Relations Board v. *Blackstone Mfg. Co.*, 123 F. (2d) 633 ..... 22, 24
National Labor Relations Board v. *J. G. Boswell Co.*, 136 F. (2d) 585 8
National Labor Relations Board v. *Cleveland-Cliffs Iron Co.*, 133 F. (2d) 295 23
National Labor Relations Board v. *Colten*, 105 F. (2d) 179 23
National Labor Relations Board v. *Electric Vacuum Cleaner Co.*, 315 U. S. 685 19
National Labor Relations Board v. *Express Publishing Co.*, 312 U. S. 426 ..... 17, 18, 19, 20, 21
National Labor Relations Board v. *Jac. Feinberg Hosiery Mill*, 134 F. (2d) 620 23
National Labor Relations Board v. *Jasper Chair Co.*, 138 F. (2d) 756, certiorari denied, No. 615, this Term 15, 16, 20
National Labor Relations Board v. *Kaplan*, 138 F. (2d) 884, certiorari denied, No. 690, this Term 20, 21
National Labor Relations Board v. *Ellis-Klatscher & Co.*, decided April 25, 1944, enforcing 40 N. L. R. B. 1037 23
National Labor Relations Board v. *Link-Belt Co.*, 311 U. S. 584 ..... 13, 25
National Labor Relations Board v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333 ..... 13, 14
National Labor Relations Board v. *Glenn L. Martin-Nebraska Co.*, decided April 5, 1944, enforcing 48 N. L. R. B. 587 23
National Labor Relations Board v. *Nevada Consolidated Copper Corp.*, 316 U. S. 105 19
National Labor Relations Board v. *Remington Rand, Inc.*, 94 F. (2d) 862, certiorari denied, 304 U. S. 576 16
National Labor Relations Board v. *Southport Petroleum Co.*, 117 F. (2d) 90, affirmed, 315 U. S. 100 23
National Labor Relations Board v. *Standard Oil Co.*, 138 F. (2d) 885 ..... 20, 21
National Labor Relations Board v. *Stone*, 125 F. (2d) 752, certiorari denied, 317 U. S. 649 22
National Labor Relations Board v. *Stremel*, 141 F. (2d) 317, enforcing 48 N. L. R. B. 660 23
National Labor Relations Board v. *Thompson Products, Inc.*, decided March 24, 1944, enforcing 46 N. L. R. B. 514 23
National Labor Relations Board v. *Thompson Products, Inc.*, 97 F. (2d) 13 16
National Labor Relations Board v. *Van Deusen*, 138 F. (2d) 893 8
National Labor Relations Board v. *Weirton Steel Co.*, 135 F. (2d) 494 ..... 8, 22

Cases—Continued. Page

Ohio Fuel Gas Co., Matter of, 35 N. L. R. B. 1128, enforced (without opinion) December 17, 1942 (C. C. A. 6) 11

Phelps Dodge Corp. v. *National Labor Relations Board*, 313 U. S. 177 ..... 8, 9

Phelps Dodge Corp., Matter of, 35 N. L. R. B. 418 11

Polish National Alliance v. *National Labor Relations Board*, 136 F. (2d) 175, affirmed on another point, No. 226, this Term 22

Quality and Service Laundry, Inc., Matter of, 39 N. L. R. B. 970, enforced 131 F. (2d) 182, certiorari denied, 318 U. S. 775 11

Richter's Bakery, Matter of, 46 N. L. R. B. 447, enforced 140 F. (2d) 870, certiorari denied, No. 970, this Term 12

Securities and Exchange Commission v. *Chenery Corp.*, 318 U. S. 80 ..... 13, 17

Southport Petroleum Co. v. *National Labor Relations Board*, 315 U. S. 100 ..... 21, 22

Tyne Co., Matter of, 35 N. L. R. B. 63, enforced 125 F. (2d) 832 11

Utah Copper Co. v. *National Labor Relations Board*, 139 F. (2d) 788, enforcing 47 N. L. R. B. 757, certiorari denied, No. 802, this Term 23

Van Deusen, Matter of, 45 N. L. R. B. 679, enforced 138 F. (2d) 893 12

Veta Mines, Inc., Matter of, 36 N. L. R. B. 288 11

Virginia Electric and Power Co., Matter of, 44 N. L. R. B. 404, enforced 132 F. (2d) 390, affirmed 319 U. S. 533 11

Virginia Electric & Power Co. v. *National Labor Relations Board*, 319 U. S. 533 13

Weirton Steel Co., Matter of, 32 N. L. R. B. 1145, enforced 135 F. (2d) 494 12

Western Cartridge Co., Matter of, 43 N. L. R. B. 179, enforced 138 F. (2d) 551, certiorari denied, No. 657, this Term 11

Statute:

National Labor Relations Act, Act of July 5, 1935, c. 372, 49 Stat. 449 (29 U. S. C., Secs. 151 *et seq.*):

Sec. 7 26

Sec. 8 (1) 20, 26

Sec. 8 (3) 20, 26

Sec. 10 (c) 26

Miscellaneous:

Administrative Procedure in Government Agencies, Monograph of the Attorney General's Committee on Administrative Procedure (Govt. Print. Off.), Part 5, pp. 22–29 15

H. Report No. 1147, 74th Cong., 1st Sess., p. 19 19

National Labor Relations Board, Sixth Annual Report (Govt. Print. Off., 1942), pp. 1–4, 8–9 15

National Labor Relations Board, Seventh Annual Report (Govt. Print. Off., 1943), pp. 9–13 15

S. Report No. 573, 74th Cong., 1st Sess., p. 11 19

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BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court below (R. 287–289) is reported in 140 F. (2d) 746. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 252–276) are reported in 49 N. L. R. B. 560.

JURISDICTION

The decree of the court below (R. 290–291) was entered on March 3, 1944. The petition for a

writ of certiorari was filed on May 15, 1944. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and under Section 10 (e) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether the Board is required, in ordering reinstatement of an unlawfully discharged employee who has secured substantially equivalent employment elsewhere, to restate the considerations which, in the exercise of its administrative judgment, the Board has previously determined warrant reinstatement as an appropriate remedy in all such cases.

2. Whether, upon finding that petitioner discouraged membership in a labor organization, the Board abused its discretion in ordering petitioner to post notices that its employees are free to become or remain members of such organization and that petitioner will not discriminate against employees because of membership or activity in the organization.

3. Whether the Board, after considering the entire record in the case, may adopt as its own, findings of fact and conclusions of law of its Trial Examiner with which it agrees, without restating such findings and conclusions.

4. Whether the cease and desist provisions of the Board's order, which were sustained by the

court below, were warranted by the Board's findings.

5. Whether the Board abused its discretion in directing its order against petitioner and "its officers, agents, successors, and assigns."

6. Whether there is substantial evidence to support the Board's findings that petitioner interfered with, restrained, and coerced its employees in violation of Section 8 (1) of the Act, and discriminatorily discharged employee Strackman in violation of Section 8 (3) and (1) of the Act.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act are set forth in the Appendix, *infra*, p. 26.

STATEMENT

Upon the usual proceedings, the Board, on May 7, 1943, issued its findings of fact, conclusions of law, and order (R. 252–276). In accordance with its recent practice, the Board in its Decision and Order adopted as its own those findings of fact and conclusions of law of its Trial Examiner with which it agreed, without restating them. After reciting that it had considered the Intermediate Report of its Trial Examiner, petitioner's exceptions thereto, the latter's brief in support of its exceptions, and the entire record in the case, the Board stated that it "hereby adopts the findings, conclusions, and recommenda-

tions of the Trial Examiner, except as noted below" (R. 253). The Board noted those findings, conclusions, and recommendations of the Trial Examiner with which it disagreed, and then set forth its Order (R. 253–257). The Intermediate Report is appended to the Board's Decision and Order (R. 257–276). The pertinent facts, as found by the Board and shown by the evidence, may be summarized as follows:[1]

Jean Strackman had worked for petitioner for 15 years at the time of her discharge (R. 260; 9, 16, 85, 130). She was one of the first of petitioner's employees to become interested in unionization of the plant, and signed a C. I. O. union card in 1938 (R. 260; 26–28, 45–46). When another union affiliated with the C. I. O.[2] inaugurated a membership campaign in July 1941, Strackman again signed a union card (R. 260; 10–11, 26–28). This time she attended meetings (R. 263; 10, 15), and solicited other employees to join the Union (R. 263; 10, 34).

A few weeks later, in August 1941, petitioner's secretary, Julius Israel, summoned Strackman to his office and asked her whether she had signed a union card. When Strackman replied that she had, Israel asked her why she joined the Union.

[1] In the following statement the references preceding the semicolon are to the Board's findings, and the succeeding references are to the supporting evidence.

[2] Wholesale & Warehouse Workers' Union, Local 65 (C. I. O.), the complaining union (R. 260; 10–11).

Upon being informed of the advantages the employees expected to secure from union membership, Israel said, "Well, I could give you all that." When Strackman retorted that he had not done so, Israel replied, "Well, I will. What do you want a union for?" Israel also asked Strackman to disclose to him the names of union members among petitioner's employees and, for such disclosure, offered her a job for as long as she wished to remain. Strackman refused to reveal the names of the other union members. During the same conversation, Israel tried to persuade Strackman to leave the Union and to induce others to do likewise (R. 260–261; 8, 11–13).

Strackman was undeterred by Israel's opposition to unionization, and later in the same month, August 1941, she questioned him concerning the dismissal of another employee who claimed to have been discharged for her union activities (R. 261–262; 40–44, 174–177, 31–32, 137–138).

On March 20, 1942, Israel informed Strackman that he anticipated leaving on his vacation shortly, and asserted, "I can't have you around, I'm afraid to trust you." Israel explained this distrust by stating: "Well, you know what's been going on all along about a union." Israel added that he had a list of the employees who had joined the Union and expected "to get rid of quite a few of these people." Israel then dis-

charged Strackman, explaining that he was really sorry to let her go but that he could not risk retaining her because she had "a few ideas" that did not "fit in with" his (R. 263–265; 15–17, 38–39, 85). Israel left for his vacation the next day (R. 265; 152–153). The Board concluded from this evidence that Strackman was discharged for her union membership and activities (R. 265–266, 253–256), and that petitioner thereby discouraged membership in the Union in violation of Section 8 (3) and (1) of the Act (R. 273, 253).

In addition to questioning Strackman concerning her union membership and attempting to induce her to withdraw from the Union, Israel also approached employee Piccolo while the latter was at work in petitioner's plant and inquired whether he was a union member. Upon receiving an affirmative response, Israel asked what he was "going to do about it," and threatened to take the matter up with Piccolo's mother, who does "contract" work for petitioner (R. 270; 171–173). The Board concluded that by these acts petitioner restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8 (1), (R. 270–271, 273, 253).

During the hearing before the Trial Examiner, petitioner attempted to show that since her discharge Strackman had obtained regular and sub-

stantially equivalent employment elsewhere (R. 24). The Examiner stopped this line of questioning with the statement that "for the purpose of the case insofar as reinstatement of employees is concerned, the fact that substantially equivalent employment has been obtained will be assumed" (R. 24). The Board, without mentioning the issue of substantially equivalent employment, found that the reinstatement of Strackman would effectuate the policies of the Act (R. 272, 253).

The Board's order directed petitioner and "its officers, agents, successors, and assigns" to cease and desist from discouraging membership in Wholesale & Warehouse Workers' Union, Local 65 (C. I. O.), the complaining union, or in any other labor organization of its employees, by discharging, refusing to reinstate, or in any manner discriminating in regard to the hire, tenure of employment, or terms or conditions of employment of its employees, and to cease and desist from in any other manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act (R. 255). The Board also ordered petitioner to offer reinstatement with back pay to Strackman and to post appropriate notices stating that it will not engage in the conduct from which it is ordered to cease and desist, that it will take the affirmative action ordered by the Board, and that its employees are free to become and

remain members of Wholesale & Warehouse Workers' Union, Local 65 (C. I. O.), and that petitioner will not discriminate against any employee because of membership in, or activity on behalf of, that organization (R. 255–256).

Thereafter the Board filed a petition for enforcement in the court below (R. 284–287). On February 15, 1944, the court delivered its *per curiam* opinion (R. 287–289), and on March 3, 1944, entered its decree (R. 290–291), enforcing the Board's order in full.

ARGUMENT

1. Petitioner erroneously contends (Pet. 4–5, 6–8, 17–21) that reinstatement should have been denied Strackman because she had obtained substantially equivalent employment elsewhere, and that the Board did not make manifest in its decision the considerations underlying its administrative judgment that reinstatement would effectuate the policies of the Act. It was clearly proper for the Board to order the reinstatement of Strackman even though she had obtained substantially equivalent employment elsewhere. *Phelps Dodge Corp.* v. *National Labor Relations Board*, 313 U. S. 177, 192–197, 200; *National Labor Relations Board* v. *Weirton Steel Co.*, 135 F. (2d) 494, 498 (C. C. A. 3); *National Labor Relations Board* v. *Van Deusen*, 138 F. (2d) 893, 895 (C. C. A. 2); *National Labor Relations Board* v. *J. G. Boswell Co.*, 136 F. (2d) 585, 596–597 (C. C. A. 9). Moreover,

the Board has complied with the mandate of this Court in the *Phelps Dodge* case (313 U. S. at 192–197, 200), and "has exercised the discretion with which Congress has empowered it" (*id.* at 197). After the *Phelps Dodge* decision, the Board, in the exercise of its administrative discretion, fully considered in *Matter of Ford Motor Co.*, 31 N. L. R. B. 994, 1099–1100, the question whether it would effectuate the policies of the Act to direct that offers of reinstatement be made to employees who were discriminatorily discharged and thereafter obtained regular and substantially equivalent employment. In the *Ford Motor* case the Board expressly determined that reinstatement of the victims of anti-union discrimination is an appropriate means of effectuating the policies of the Act, irrespective of whether such persons have obtained regular and substantially equivalent employment elsewhere. The Board based this determination upon several grounds:

> * * * The Act postulates, and the fact is readily verified by common experience, that anti-union discrimination exercises a coercive effect not only upon the immediate victim, but upon all present or future employees of the particular employer; it impresses upon them the danger to their welfare and security associated with membership in or activity on behalf of a labor organization. Accordingly, the purpose of the order to offer reinstatement is not only

to restore the victim of discrimination to the position from which he was unlawfully excluded, but also, and more significantly, to dissipate the deeply coercive effects upon other employees who may desire self-organization, but have been discouraged therefrom by the threat to them implicit in the discrimination. This essential reassurance can be afforded—freedom can be reestablished—only by a demonstration that the Act carries sufficient force to restore to work anyone who has been penalized for exercising rights which the Act guarantees and protects; the acquisition of equivalent employment is no more relevant to this purpose than the acquisition of non-equivalent employment, or of no employment at all.

Further, it is a demonstrated fact of which we take notice that necessity almost inevitably compels a discharged employee to seek the best available other employment. If reinstatement were rendered inappropriate by reason of success in that search, the employer would be able, through elimination of union adherents, at once to impede or terminate exercise of the right of self-organization in his plant and at the same time to perpetuate his advantage by relying upon the victims' necessity of earning a livelihood elsewhere to assure their permanent riddance. This would afford a ready means for complete and final ouster of those prominent in the employees' efforts at self-organization.

> For the foregoing reasons, we conclude that the mere obtainment of substantially equivalent employment, and evidence pertaining thereto, is irrelevant to considerations decisive of the question whether reinstatement effectuates the policies of the Act. *These decisive considerations do not vary from case to case* (31 N. L. R. B. at 1099–1100). [Italics added.]

The Board has repeatedly reaffirmed this conclusion that in cases of discriminatory discharge a showing that the victim has received substantially equivalent employment does not render an offer of reinstatement inappropriate to effectuate the policies of the Act, and the courts have consistently enforced Board orders based upon this determination.[3]

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[3] See supplemental findings of fact and recommendations in *Matter of Phelps Dodge Corp.*, 35 N. L. R. B. 418, 419–421, adopted by Circuit Court of Appeals for the Second Circuit on November 3, 1941; supplemental findings of fact and recommendations in *Matter of Continental Oil Co.*, 35 N. L. R. B. 331, 332–334, adopted by Circuit Court of Appeals for the Tenth Circuit on November 13, 1941; *Matter of J. G. Boswell Co.*, 35 N. L. R. B. 968, 1025, 1028, enforced, 136 F. (2d) 585, 596–597 (C. C. A. 9); *Matter of Tyne Co.*, 35 N. L. R. B. 63, 76, enforced, 125 F. (2d) 832, 836 (C. C. A. 7); *Matter of Ohio Fuel Gas Co.*, 35 N. L. R. B. 1128, 1142, enforced (without opinion) December 17, 1942 (C. C. A. 6); *Matter of Veta Mines, Inc.*, 36 N. L. R. B. 288, 299; *Matter of American Cyanamid Co.*, 37 N. L. R. B. 578, 614; *Matter of Quality and Service Laundry, Inc.*, 39 N. L. R. B. 970, 986–987, enforced, 131 F. (2d) 182 (C. C. A. 4), certiorari denied, 318 U. S. 775; *Matter of Western Cartridge Co.*, 43 N. L. R. B. 179, 202, enforced, 138 F. (2d) 551, 553 (C. C. A.

The court below rejected petitioner's objection to this practice and concluded that: "The same reasons, whether they are good or bad, always exist whenever an employee is discharged for union activity, and it would be a barren formality to require their repetition in every case. Until the Supreme Court determines that more is necessary, we shall assume that the reasons for requiring reinstatement are always the same as were given, once and for all, in the *Ford* case, and that they need not be stated. They are that without the assurance that such offer will always be forthcoming, employees may hesitate fearlessly to exercise their rights, secured to them by the statute" (R. 288–289). It is submitted that the court below correctly refused to burden the administrative process by requiring the Board to go through the "barren formality" (R. 288) of restating in each case reasons which the Board itself stated "do not vary from case to

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2), certiorari denied, No. 657, this Term; *Matter of Virginia Electric and Power Co.*, 44 N. L. R. B. 404, 438, enforced, 132 F. (2d) 390 (C. C. A. 4), affirmed, 319 U. S. 533; *Matter of American Laundry Machinery Co.*, 45 N. L. R. B. 355, 355–356, 366, enforced, 138 F. (2d) 889 (C. C. A. 2); *Matter of Van Deusen*, 45 N. L. R. B. 679, 697–698, enforced, 138 F. (2d) 893, 895 (C. C. A. 2); *Matter of Richter's Bakery*, 46 N. L. R. B. 447, 481, 452, enforced, 140 F. (2d) 870 (C. C. A. 5), certiorari denied, No. 970, this Term; *Matter of Idaho Refining Co.*, 47 N. L. R. B. 1127, 1134; *Matter of Cape County Milling Co.*, 49 N. L. R. B. 226, 249, 226–227, enforced, 140 F. (2d) 543 (C. C. A. 8); *Matter of Weirton Steel Co.*, 32 N. L. R. B. 1145, 1263, enforced, 135 F. (2d) 494, 498 (C. C. A. 3).

case." (31 N. L. R. B. at 1100) Compare *Securities and Exchange Commission* v. *Chenery Corp.*, 318 U. S. 80, 88, 93–95; *Helvering* v. *Gowran*, 302 U. S. 238, 245–246.

2. Petitioner contends (Pet. 5, 8–9, 22–23) that the Board's order is unauthorized by the Act insofar as it requires petitioner to post notices stating, without more, that its employees are free to become or remain members of the particular labor organization in which the Board found petitioner discouraged membership, and that petitioner will not discriminate against the employees because of membership or activity in that organization. This form of notice is normally ordered by the Board in cases such as the one at bar, and it is a proper exercise of the Board's discretionary power to determine "how the effect of prior unfair labor practices may be expunged." *International Association of Machinists* v. *National Labor Relations Board*, 311 U. S. 72, 82; *National Labor Relations Board* v. *Link-Belt Co.*, 311 U. S. 584, 600; *Virginia Electric & Power Co.* v. *National Labor Relations Board*, 319 U. S. 533, 539–540. Indeed, an order that petitioner notify its employees that they are free to adhere to the particular labor organization against which petitioner's discriminatory conduct was directed is peculiarly "adapted to the situation which calls for redress." *National Labor Relations Board* v. *Mackay Radio & Tele-*

graph Co., 304 U. S. 333, 348. The same contention raised by petitioner was presented to this Court in *National Labor Relations Board* v. *Aintree Corp.*, 132 F. (2d) 469 (C. C. A. 7), certiorari denied, 318 U. S. 774; and *National Labor Relations Board* v. *Baltimore Transit Co.*, 140 F. (2d) 51 (C. C. A. 4), certiorari denied, No. 735, this Term. Petitioner's contention was rejected without discussion by the court below (see R. 289).

3. Petitioner asserts (Pet. 5, 9, 24–26) that the Board did not satisfy the requirements of Section 10 (c) of the Act because, after considering the entire record in the case, the Board adopted as its own those findings of fact and conclusions of law of its Trial Examiner with which it agreed, without restating such findings and conclusions (R. 252–276). The Board's opinion recited that it had considered the Intermediate Report of its Trial Examiner, petitioner's exceptions thereto, the latter's brief in support of its exceptions, and the entire record in the case (R. 253). The Board then stated that it "hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, except as noted below" (R. 253). The Board noted those findings, conclusions, and recommendations of the Trial Examiner with which it disagreed, set forth its Order, and appended the Intermediate Report (R. 253–276). This form of Board

decision has been recently used primarily to expedite the disposition of cases, in response to the increasing case load since the advent of the war.[4] It conforms to the recommendation of the Attorney General's Committee on Administrative Procedure that it would be desirable for the Board "in many cases to adopt as its own the trial examiner's findings and conclusions, subject, of course, to such alterations as might appear to be necessary in the light of the parties' arguments to the Board."[5]

The identical question raised by petitioner was recently presented to this Court by the employer in *National Labor Relations Board* v. *Jasper Chair Co.*, 138 F. (2d) 756 (C. C. A. 7), certiorari denied, No. 615, this Term. It presents no conflict of decisions or question of general importance. No circuit court of appeals has refused enforcement of a Board order on the ground urged herein by petitioner, or on any similar ground. Indeed, the *Jasper Chair* case is the only decision in which a court has even deemed the contention worthy of discussion. In the instant case the court below rejected this contention without comment (see R. 289):

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[4] *Sixth Annual Report of the National Labor Relations Board*, (Govt. Print. Off., 1942), pp. 1–4, 8–9; *Seventh Annual Report* (Govt. Print. Off., 1943), pp. 9–13.

[5] *Administrative Procedure in Government Agencies*, *Monograph of the Attorney General's Committee on Administrative Procedure* (Govt. Print. Off.), Part 5, pp. 22–29.

Petitioner also contends (Pet. 5, 9, 24–26) that the "form" of the Trial Examiner's findings of fact, referred to and adopted in part by the Board, does not conform to the requirements of Section 10 (c) because it is "a discursive statement of the evidence, pro and con, in narrative form." This "form" has been used regularly by the Board for years, and although early in the Board's history two circuit courts of appeals voiced objection to the form of the Board's findings,* no court has ever refused enforcement of a Board order on this or any related ground. Moreover, the form of the Board's findings is proper; it contains the evidence upon which the Board bases its conclusions as well as the Board's ultimate findings of fact. In any event, "no special form or style in which the findings shall be cast is prescribed in the Act or in the Board's rules." *National Labor Relations Board* v. *Jasper Chair Co.*, 138 F. (2d) 756, 758 (C. C. A. 7),

National Labor Relations Board v. *Remington Rand, Inc.*, 94 F. (2d) 862, 865 (C. C. A. 2), certiorari denied, 304 U. S. 576, 585 ("It is rather in the nature of a discursive opinion than of specific findings of fact, but it ends with certain conclusions of law followed by the order"); *National Labor Relations Board* v. *Thompson Products, Inc.*, 97 F. (2d) 13 (C. C. A. 6) (Judge Simons concurred in the result but refused to express any view upon the court's criticism of the form of the Board's findings).

It is worthy of note that the court below, which had decided the *Remington Rand* case, *supra*, rejected without comment petitioner's objection to the form of the Board's findings in the instant case.

certiorari denied, No. 615, this Term. Compare *Securities and Exchange Commission* v. *Chenery Corp.*, 318 U. S. 80, 95.

4. Petitioner contends (Pet. 5–6, 10–12, 27–28) that the cease and desist provisions of the Board's order, which were sustained by the court below, are invalid in two respects, under the principles enunciated in *National Labor Relations Board* v. *Express Publishing Co.*, 312 U. S. 426. In the instant case the Board found that petitioner interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8 (1), and discouraged membership in the Union by its discharge of Strackman for her union membership and activities, in violation of Section 8 (3) and (1) (R. 270–271, 253). In order to remedy these unfair labor practices the Board ordered petitioner, *inter alia*, to cease and desist from discouraging membership in labor organizations by discharging, refusing to reinstate, or in any manner discriminating in regard to hire, tenure of employment, or terms or conditions of employment of its employees and from in any other manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act (R. 255). In the *Express Publishing* case this Court recognized that "Having found the acts which constitute the unfair labor practice the Board is free to restrain

the practice and other like or related unlawful acts. * * * The breadth of the order * * * must depend upon the circumstances of each case, the purpose being to prevent violations, the threat of which in the future is indicated because of their similarity or relation to those unlawful acts which the Board has found to have been committed by the employer in the past" (312 U. S. at 436–437).

Petitioner contends, nevertheless, that (1) the cease and desist "in any other manner" provision of the Board's order and (2) the provision ordering petitioner to cease and desist from discouraging membership in labor organizations by discharging, refusing to reinstate or discriminating in regard to hire, tenure of employment or terms or conditions of employment of its employees, are invalid. Each contention is based upon an erroneous assumption. The first assumes (Pet. 10, 28) that the provision of the order which restrains petitioner from in any manner infringing the rights guaranteed to employees under Section 7 of the Act is based solely upon the fact that a violation of Section 8 (3) of the Act is also technically a violation of Section 8 (1). As noted above, however, the Board found independent violations of Section 8 (1) and (3) of the Act (R. 270–271, 253). In view of these findings, it is clear that the Board's order is valid under the rule of the *Express Pub-*

lishing case, 312 U. S. at 436–438. Since its decision in that case this Court has enforced provisions identical with the one here in question. *National Labor Relations Board* v. *Automotive Maintenance Machinery Co.*, 315 U. S. 282; *National Labor Relations Board* v. *Electric Vacuum Cleaner Co.*, 315 U. S. 685; *National Labor Relations Board* v. *Nevada Consolidated Copper Corp.*, 316 U. S. 105. Petitioner's second contention on this issue assumes (Pet. 5–6, 11–12, 27–28) that discouraging membership in labor organizations by refusing to reinstate or discriminating in regard to hire, tenure of employment, or terms or conditions of employment of its employees is totally unrelated to discouraging membership in a labor organization by a discharge for union membership and activities. On the contrary, however, the terms of the statute (Section 8 (3)) and the Congressional reports concerning it[7] make it abundantly clear that the forms of discrimination proscribed in the Board's order and the discriminatory discharge found by the Board are "like or related unlawful acts" which "the Board is free to restrain." *Express Publishing* case, 312 U. S. at 436. Contentions similar to that raised by petitioner were presented to the Court this Term by the employers in *Butler Bros.* v. *National Labor Relations Board*,

[7] H. Rep. No. 1147, 74th Cong., 1st Sess., p. 19; S. Rep. No. 573, 74th Cong., 1st Sess., p. 11.

134 F. (2d) 981 (C. C. A. 7), certiorari denied, No. 274, this Term; *National Labor Relations Board* v. *Jasper Chair Co.*, 138 F. (2d) 756 (C. C. A. 7), certiorari denied, No. 615, this Term; and *National Labor Relations Board* v. *Kaplan*, 138 F. (2d) 884 (C. C. A. 2), certiorari denied, No. 690, this Term.

Despite petitioner's assertions (Pet. 5, 11, 27), there is no conflict between the Second Circuit's decisions in *National Labor Relations Board* v. *Standard Oil Co.*, 138 F. (2d) 885 and *National Labor Relations Board* v. *Air Associates, Inc.*, 121 F. (2d) 586, 592, which it followed in the instant case (R. 289), and the *Express Publishing* case. In the *Air Associates* case, the court specifically pointed out that there were independent violations of Section 8 (1) and (3) of the Act, thereby distinguishing that case from the *Express Publishing* case; and the court enforced the broad cease and desist provisions of the Board's order (121 F. (2d) at 592). In the *Standard Oil* case there was a violation of Section 8 (2) of the Act, and the court properly upheld the broad cease and desist provision of the Board's order (138 F. (2d) at 888). See *Express Publishing* case, 312 U. S. at 436–438. Moreover, the court expressly stated in the *Standard Oil* case that "It would follow that to issue an injunction under Section 8 (1) the employer must have done something not specifically men

tioned in the other subdivisions of Section 8" (138 F. (2d) at 888).[8] The instant case comes squarely within that rule. Petitioner's contention that there is a conflict between the *Standard Oil* and *Air Associates* cases and the *Express Publishing* case was recently presented to this Court by the employer in *National Labor Relations Board* v. *Kaplan*, 138 F. (2d) 884 (C. C. A. 2), certiorari denied, No. 690, this Term.

5. Petitioner contends (Pet. 6, 12–13, 28–29) that the Board abused its discretion in directing its order against petitioner and "its officers, agents, successors, and assigns."[9] As this Court has noted:[10] "This is the usual form of order,

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[8] Although a comparison of the majority and concurring opinions of the court in the *Standard Oil* case seems to reveal a conflict within the Circuit Court of Appeals for the Second Circuit concerning the propriety of the broad cease and desist provision in cases where no independent violation of Section 8 (1) is found, that issue is not presented in the instant case. In any event, there is no difference of opinion among that court concerning the propriety of the broad cease and desist provision when there is an independent violation of Section 8 (1). We have discussed this issue in more detail in our brief in opposition to the petition for a writ of certiorari in *National Labor Relations Board* v. *Kaplan*, 138 F. (2d) 884 (C. C. A. 2), certiorari denied, No. 690, this Term, to which we respectfully refer the Court.

[9] As we note below, pp. 23–25, petitioner also advances the inconsistent contention (Pet. 12–13, 28–29) that the interpretation of this phrase by the court below has restricted it unduly and is in conflict with a broader interpretation of the phrase by this Court.

[10] *Southport Petroleum Co.* v. *National Labor Relations Board*, 315 U. S. 100, 106–107, note 6.

and has frequently been employed in cases where this Court has sustained Board orders." It clearly was not an abuse of the Board's discretion to direct its order against the officers, agents, successors, and assigns of a continuing commercial enterprise which has interfered with, restrained, coerced, and discriminated against its employees in violation of the Act. *Southport Petroleum Co.* v. *National Labor Relations Board*, 315 U. S. 100, 106–107; see also cases cited *infra*, note 12.

While, as petitioner notes (Pet. 12, 28), the circuit court of appeals for the Seventh Circuit has held that an order should not be directed against the employer's "successors and assigns" in the absence of special circumstances,[11] no other circuit court of appeals has followed this line of decisions. On the contrary, the circuit courts of appeals for the First, Second, Third, Fourth, and Sixth Circuits and the Court of Appeals for the District of Columbia have expressly upheld the Board's authority to issue such an order,[12]

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[11] E. g. *National Labor Relations Board* v. *Bachelder*, 125 F. (2d) 387, 388; *National Labor Relations Board* v. *Stone*, 125 F. (2d) 752, 757, certiorari denied (employer's petition), 317 U. S. 649; *Butler Bros.* v. *National Labor Relations Board*, 134 F. (2d) 981, 985, certiorari denied (employers' petitions), Nos. 274, 380, this Term; *Polish National Alliance* v. *National Labor Relations Board*, 136 F. (2d) 175, 181, affirmed on another point, No. 226, this Term.

[12] *Bethlehem Shipbuilding Corp., Ltd.* v. *National Labor Relations Board*, 114 F. (2d) 930, 933 (C. C. A. 1); *National Labor Relations Board* v. *Blackstone Manufacturing Co., Inc.*, 123 F. (2d) 633, 635 (C. C. A. 2); *National Labor Rela-*

and the Fifth, Eighth, Ninth, and Tenth Circuits have consistently enforced such orders without comment.[13] Even if the instant decision may be regarded as conflicting with decisions of the Seventh Circuit on this issue, this would not appear to raise a question of sufficient importance to warrant the granting of a writ of certiorari. At present, only the Seventh Circuit modifies Board orders by the deletion of "successors and assigns," so this question has not raised administrative difficulties requiring review by this Court; on the

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tions Board v. *Weirton Steel Co.*, 135 F. (2d) 494, 498–499 (C. C. A. 3); *National Labor Relations Board* v. *Jac. Feinberg Hosiery Mill, Inc.*, 134 F. (2d) 620 (C. C. A. 4); *National Labor Relations Board* v. *Colten*, 105 F. (2d) 179, 183 (C. C. A. 6); *Bethlehem Steel Co.* v. *National Labor Relations Board*, 120 F. (2d) 641, 650–651 (App. D. C.); but see *National Labor Relations Board* v. *Cleveland-Cliffs Iron Co.*, 133 F. (2d) 295, 302 (C. C. A. 6).

[13] E. g. *National Labor Relations Board* v. *Southport Petroleum Co.*, 117 F. (2d) 90 (C. C. A. 5), affirmed, 315 U. S. 100, 106–107; *Humble Oil & Refining Co.* v. *National Labor Relations Board*, 140 F. (2d) 777 (C. C. A. 5), enforcing 48 N. L. R. B. 1118, 1120–1121; *National Labor Relations Board* v. *Glenn L. Martin-Nebraska Co.*, decided April 5, 1944 (C. C. A. 8), enforcing 48 N. L. R. B. 587, 593–594; *Elastic Stop Nut Corp.* v. *National Labor Relations Board*, decided May 1, 1944 (C. C. A. 8), enforcing 51 N. L. R. B. 694, 703–704; *National Labor Relations Board* v. *Thompson Products, Inc.*, decided March 24, 1944 (C. C. A. 9), enforcing 46 N. L. R. B. 514, 515–516; *National Labor Relations Board* v. *Ellis-Klatscher & Co.*, decided April 25, 1944 (C. C. A. 9), enforcing 40 N. L. R. B. 1037, 1056–1057; *Utah Copper Co.* v. *National Labor Relations Board*, 139 F. (2d) 788 (C. C. A. 10), enforcing 47 N. L. R. B. 757, 759–760, certiorari denied, No. 802, this Term; *National Labor Relations Board* v. *Stremel*, 141 F. (2d) 317 (C. C. A. 10), enforcing 48 N. L. R. B. 660, 662–663.

other hand, petitioner makes no showing that the Board's order is improper in the case at bar. The fear expressed by petitioner (Pet. 29) concerning the effect of this phrase is not well founded in view of the lower court's interpretation of it (R. 289). *National Labor Relations Board* v. *Blackstone Manufacturing Co., Inc.*, 123 F. (2d) 633, 635 (C. C. A. 2). Contrary to petitioner's contention (Pet. 12–13, 28–29), there is no conflict between the *Blackstone* case and this Court's decision in the *Southport Petroleum* case. In any event, the question whether the Second Circuit might—in accordance with its interpretation of this phrase in the *Blackstone* case (123 F. (2d) at 635)—unduly restrict the scope of the phrase in a contempt proceeding is not now before the Court. Indeed, petitioner would not be injured by such a restrictive interpretation and, not being directly affected, probably could not raise the issue. Cf. *Blackstone* case, 123 F. (2d) at 635.

6. Petitioner's contention (Pet. 6, 13, 29–30) that the Board's findings of unfair labor practices are not supported by substantial evidence is based upon its assertion that "Strackman's testimony was subject to more than ordinary self-contradiction" and that her "version of the facts" was "false."[14] The Board's determination that

[14] Petitioner attacks only obliquely (Pet. 26, 28) the Board's finding of a violation of Section 8 (1) of the Act. This finding (R. 270–271, 253) is clearly supported by the evidence summarized in the Statement, *supra*, pp. 4–6.

Strackman's testimony is credible[15] is clearly proper. *National Labor Relations Board* v. *Link-Belt Co.*, 311 U. S. 584, 597. The court below concluded that: "We assume for argument that testimony may be, upon the mere reading, so unconvincing as not to support a finding, but Strackman's testimony was very far from that; we find in it no more confusion as to details than is not uncommon in the stories of entirely honest and reliable witnesses" (R. 287–288). Petitioner's contention presents no question of general importance. It was properly rejected by the court below.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

CHARLES FAHY,
Solicitor General.

ALVIN J. ROCKWELL,
General Counsel,
RUTH WEYAND,
MILLARD CASS,
Attorneys,
National Labor Relations Board.

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[15] The Board adopted (R. 253) the Trial Examiner's finding that "Strackman was a credible witness" (R. 221) whose testimony "reflects the true facts" (R. 226).

APPENDIX

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C., 151 *et seq.*) are as follows:

> SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.
>
> SEC. 8. It shall be an unfair labor practice for an employer—
>
> (1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.
>
> * * * * *
>
> (3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization * * *.
>
> * * * * *
>
> SEC. 10. * * *
>
> (c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

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